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4 Pro Se

5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN JOSE DIVISION**

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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE
SVK

8 Frederick Bates } Case Number: 20 07609
9 Plaintiff, }
10 vs. } COMPLAINT FOR INDEPENDENT
11 City of San Jose; Robert Davis, individually } ACTION IN EQUITY FOR RELIEF
and in his official capacity as City of San Jose } FROM JUDGMENT
12 Chief of Police; Adonna Amoroso, }
13 individually and in her official capacity as }
14 City of San Jose Deputy Chief of Police; }
Tuck Younis, individually and in his official }
capacity as City of San Jose Police Captain, }
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16 Defendants. }
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I. INTRODUCTION

20 This is a complaint by Plaintiff, proceeding pro se, for independent action in equity for
21 relief from judgment in case C-06-05302 RMW (Frederick Bates vs. City of San Jose et al) filed
22 by Plaintiff on August 29, 2006. Defendants filed a motion for summary judgment on October
23 12, 2007. Defendants were granted their motion for summary judgment on July 7, 2008 based on
24 qualified immunity for individual Defendants Adonna Amoroso and Robert Davis, and collateral
25 estoppel as to Defendant City of San Jose. Plaintiff alleges that the judgment as it relates to the
26 grant of qualified immunity to individual Defendants Amoroso and Davis was procured through
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1 fraud on the court. Plaintiff alleges that the dismissal of Plaintiff's cause of action against
2 Defendant City of San Jose based on collateral estoppel violates 28 U.S.C. Section 1738, the Full
3 Faith and Credit Act. Plaintiff alleges that the court's deep-seated bias against him and
4 favoritism for Defendants renders its judgment unconstitutional. Plaintiff alleges that the
5 judgment is void because of fraud on the court and the clear violation of 28 U.S.C. Section 1738.
6 Plaintiff alleges that he has been deprived of his rights under the Constitution to due process and
7 equal treatment under the law. This action is brought pursuant to Federal Rules of Civil
8 Procedure 60(d)(1) and 60(d)(3), 28 U.S.C. Section 1738, and the First, Fifth, and Fourteenth
9 Amendments of the United States Constitution.

11 **PLAINTIFF ALLEGES:**

12 1) Jurisdiction for this action is not an issue since this court entered judgment in case C-06-
13 05302 RMW and currently has jurisdiction over its judgment.

15 **FIRST CAUSE OF ACTION**

16 2) In August 2006, Plaintiff filed complaint C-06-05302 RMW. In that complaint, Plaintiff
17 sued the City of San Jose, Chief of Police Robert Davis, Deputy Chief of Police Adonna
18 Amoroso and Police Captain Tuck Younis for violating his civil rights when he was denied a
19 permit to carry a concealed weapon (CCW), without a hearing required by Section 12027.1 of
20 the California Penal Code, upon his medical disability retirement from the City's police
21 department in 2004.

23 3) The summary of Plaintiff's complaint is that he was first denied a CCW permit by
24 Defendant Amoroso because she claimed to be confused about Plaintiff's work restriction to
25 avoid psycho-emotional stress due to his hypertension, and that she believed Plaintiff's
26 retirement was based on a psychological disability. Yet Defendants Younis and Davis denied
27 Plaintiff a CCW permit several more times after receiving information in the form of letters from

1 Plaintiff's doctor and attorney explaining that his work restriction was provided in order to
2 control his hypertension. Furthermore, the information provided made it clear that Plaintiff did
3 not have a psychological disability and that he should have no problem or difficulty carrying a
4 concealed weapon. The heart of Plaintiff's complaint is that Defendants Younis and Davis
5 denied Plaintiff a CCW permit, without a hearing, with the knowledge that he did not retire on a
6 psychological disability and that he was qualified to carry a concealed weapon based on the
7 information Younis and Davis received from his doctor and attorney. California Penal Code
8 Section 12027.1 requires that a retiring officer be given a hearing in front of a three member
9 hearing board in all denials of a CCW permit except for psychological disability retirements.

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11 4) The City filed its answer on November 27, 2006. The City made admissions to
12 allegations in Plaintiff's complaint that Defendants Amoroso, Younis, and Davis violated the
13 mandatory hearing requirement of Section 12027.1 of California's Penal Code. The City admits
14 in its answer unequivocally that Defendant Younis, and by necessary implication Defendant
15 Davis, violated Section 12027.1 because they denied Plaintiff a CCW permit, without a hearing
16 required by Section 12027.1, when they knew with absolute certainty that Plaintiff did not have a
17 psychological disability and was entitled to a CCW permit or a hearing.

18
19 5) Shortly after filing the Defendants' answer, attorneys for the City engaged in a
20 conspiracy with Plaintiff's attorney, Stuart Kirchick, to perpetrate fraud on the court by
21 submitting a false set of facts and fraudulent documents. On December 1, 2006, Kirchick and
22 attorneys for the City filed a joint case management statement pushing a false narrative that
23 Plaintiff was denied his CCW permit only one time by Defendant Amoroso in April 2004 and
24 that Plaintiff was granted his CCW permit in August 2004 by Defendant Younis after Younis
25 received a letter from Plaintiff's doctor stating that he should have no problem or difficulty
26 carrying a concealed weapon. This narrative is easily proven to be false by the aforementioned
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1 allegations in Plaintiff's complaint and the admissions in Defendants' answer which establish
2 that Plaintiff was denied a CCW permit in August 2004 by Defendant Younis after Younis
3 received the letter stating that Plaintiff should have no problems or difficulty carrying a
4 concealed weapon because of his work restriction to avoid stress. Defendants also admit in their
5 answer that Plaintiff was denied a CCW permit for four more months; and that it was in
6 December 2004 when Plaintiff received a CCW permit.
7

8) The false narrative that Plaintiff was denied his CCW permit only one time by Defendant
9 Amoroso in April 2004 and that Plaintiff received his CCW permit in August 2004 from
10 Defendant Younis set the stage for a summary judgment motion that was to be filed by
11 Defendants for the express purposes of perpetrating fraud on the court and depriving Plaintiff of
12 his constitutional rights to a fair trial on his complaint.
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7) To further set the stage for Defendants' motion for summary judgment was the perjured
statements of Defendant Younis in his deposition on June 8, 2007. Younis pushed the false
narrative that was agreed to in the settlement conference statement that he granted Plaintiff his
CCW permit immediately upon receiving the information in August 2004 clarifying that Plaintiff
did not retire on a psychological disability and was qualified to carry a concealed weapon.
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8) On August 3, 2007, Defendant Younis was dismissed from Plaintiff's lawsuit through a
fraudulent stipulation between Plaintiff's attorney and Defendants' attorneys without any reason
being given. Plaintiff never authorized his attorney to dismiss Defendant Younis from his lawsuit
and Plaintiff's attorney never had a discussion with Plaintiff regarding the dismissal of Younis.
The dismissal of Younis caused irreparable harm to Plaintiff's complaint. The stipulation of
dismissal was entered for the purpose of depriving the court of its rightful authority to rule on the
actions of Younis that clearly violated Plaintiff's constitutional rights to a due process hearing
guaranteed by Section 12027.1 of the California Penal Code.
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1) 9) On October 12, 2007, Defendants filed their motion for summary judgment based on the
2 defense of qualified immunity for individual Defendants Amoroso and Davis. The focus of the
3 summary judgment motion was the false narrative put forth by the joint settlement conference
4 statement by Defendants and Plaintiff's attorney that Plaintiff had been denied his CCW permit
5 only one time by Defendant Amoroso. The summary judgment motion falsely states that Plaintiff
6 was granted his CCW permit by Defendant Younis in August 2004 after Younis received the
7 letter from Plaintiff's doctor clarifying that Plaintiff's work restriction should not prohibit him
8 from carrying a concealed weapon.

10) 10) On October 12, 2007, former Defendant Tuck Younis (fraudulently dismissed by
11 stipulation) filed a declaration in support of Defendants' motion for summary judgment under
12 penalty of perjury. Younis knowingly made a false statement on a material issue. Younis
13 declared that Defendant Rob Davis played no role in the denial and later granting of Plaintiff's
14 CCW permit, even though Davis received the letters from Plaintiff's attorney and doctor in
15 October 2004 stating that Plaintiff should be granted a CCW permit. Younis was well aware that
16 his declaration was based on fraud and that he was committing perjury.

18) 11) On October 29, 2007, Plaintiff's attorney filed his opposition to Defendants' motion for
19 summary judgment. In keeping with the false narrative that Plaintiff's attorney and Defendants'
20 attorneys had agreed to in their joint settlement conference statement, Plaintiff's opposition only
21 addressed the denial of Plaintiff's CCW permit by Defendant Amoroso in April 2004. Plaintiff's
22 attorney intentionally did not argue in his opposition papers that the Defendants had made
23 admissions in their answer that Defendant Younis and Defendant Davis both denied Plaintiff a
24 CCW permit, without a hearing, after receiving letters from Plaintiff's doctor and attorney
25 clarifying that Plaintiff was qualified to carry a concealed weapon. Even though it was
26 indisputable that Defendants Younis and Davis violated the hearing requirement of Section
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12027.1, Plaintiff's attorney did not make this argument in his opposition because of the
 2 agreement he made with attorneys for the City to perpetrate fraud on the court with their joint
 3 settlement conference statement that Plaintiff had been denied his CCW permit only once by
 4 Defendant Amoroso in April 2004. In the hearing on Defendants' summary judgment motion on
 5 November 9, 2007, Plaintiff's attorney also failed to argue that Defendants had admitted in their
 6 answer that Defendant Younis had denied Plaintiff a CCW permit, without a hearing required by
 7 Section 12027.1, when it was sufficiently clear that Plaintiff did not retire on a psychological
 8 disability.

12) On July 7, 2008, the motion for summary judgment was granted as to Defendants
 11 Amoroso and Davis based on their qualified immunity defense, even though the court held that
 12 Amoroso and Davis violated Plaintiff's due process rights to a hearing under Section 12027.1.
 13 The court ruled that it was clear from Plaintiff's application for disability retirement that he
 14 retired on a medical disability instead of a psychological disability and was therefore entitled to
 15 the due process hearing required by Section 12027.1. The court ruled that the hearing
 16 requirement of Section 12027.1 implicates a constitutionally protected interest because the
 17 hearing requirement impose a substantive restriction on the actions of the City's police
 18 department.

13) The fraud on the court perpetrated by Defendants and Plaintiff's attorney deprived him of
 21 due process that is guaranteed by the United States Constitution because it hindered the court's
 22 ability to make a fair and impartial ruling on Defendants' motion for summary judgment. The
 23 fraud by Defendants and Plaintiff's attorney renders the judgment of the court null and void.

25 **SECOND CAUSE OF ACTION**

26) In its judgment on July 7, 2008, the court dismissed Plaintiff's cause of action against
 27 Defendant City of San Jose based on the collateral estoppel effect of a judgment the City won
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1 against Plaintiff in 2006 in the County of Santa Clara Small Claims Court in the State of
2 California. In giving preclusive effect to the small claims judgment, the court failed to follow the
3 requirements of 28 U.S.C. Section 1738, the Full Faith and Credit Act. The Full Faith and Credit
4 Act, which is bolstered by U.S. Supreme Court precedent and the precedent of the Ninth Circuit
5 Court of Appeals, commands federal courts to look to the preclusion law of the state where the
6 judgment was rendered; and to give the same preclusive effect to a state court judgment as would
7 a court in the rendering state.

9 15) Under California preclusion law, the small claims judgment would not be given
10 preclusive effect because the issue that Plaintiff raised in his small claims complaint, which is the
11 same in Plaintiff's complaint C-06-05302 RMW, was not litigated and determined in the small
12 claims proceeding. The issue that Plaintiff raised in the small claims case and in C-06-05302
13 RMW is that police officials, Davis, Amoroso, and Younis denied him a due process hearing that
14 is mandated by California law after Plaintiff was denied a CCW permit upon his medical
15 disability retirement from the San Jose Police Department. Furthermore, there is no record
16 whatsoever from the Small Claims Court that states what was litigated and determined and that
17 Plaintiff was given a full and fair opportunity to litigate his claim. The judgment of the court as it
18 relates to collateral estoppel has no legal basis whatsoever and is a blatant violation of 28 U.S.C.
19 Section 1738, the Full Faith and Credit Act.

21 16) The judgment as it relates to the issue of collateral estoppel has no binding effect on
22 Plaintiff by law and its enforcement violates Plaintiff's due process rights under the United
23 States Constitution.

25 **THIRD CAUSE OF ACTION**

26 17) Plaintiff reallege and incorporate by reference the allegations set forth in paragraphs 2-14
27 of this complaint.

1 18) The court could have and should have entered summary judgment in Plaintiff's favor *sua
2 sponte* after Defendants made admissions in their answer to his complaint (C-06-05302 RMW)
3 that they had violated the hearing requirement of Section 12027.1 when denying Plaintiff a CCW
4 permit. Defendants made admissions in their answer that Defendant Younis received a letter
5 from Plaintiff's doctor stating that his work restriction to avoid psycho-emotional stress was
6 provided for medical reasons and not psychological reasons and that he was a suitable candidate
7 to receive a CCW permit. Defendants admitted in their answer that Younis denied Plaintiff a
8 CCW permit, without a hearing, after receiving the letter. The denial of a CCW permit to
9 Plaintiff, without a hearing, was a clear violation of the hearing requirement of California Penal
10 Code Section 12027.1 which implicates a constitutionally protected interest.

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12 19) The court's grant of qualified immunity to Defendant Amoroso is inconsistent with the
13 facts and the law based on its finding that Amoroso violated the hearing requirement of Section
14 12027.1 and that 12027.1 implicates a constitutionally protected interest. The court's grant of
15 qualified immunity to Defendant Amoroso reflects intentional bias towards Plaintiff and
16 favoritism for Defendants.

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18 20) The court did not act in an impartial manner when Plaintiff filed a Rule 60 motion for
19 relief from judgment on February 21, 2013. The court misrepresented Plaintiff's motion in
20 docket entries to be regarding "Cost Taxed," when in fact, his motion was based on fraud on the
21 court by Defendants and Plaintiff's attorney. The court conspired with Defendants to hold a
22 fraudulent hearing denying his motion on April 26, 2013 resulting in a fraudulent transcript and
23 civil minutes based on the court's favoritism for Defendants and bias against Plaintiff.

24
25 21) The court was not impartial and disinterested when it denied Plaintiff's motion to vacate
26 the stipulation of dismissal of Defendant Tuck Younis that was filed on September 25, 2014. The
27 motion to vacate the stipulation of dismissal of Defendant Younis established that Plaintiff's
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1 attorney entered the stipulation without his knowledge and authority and that the stipulation
2 harmed his cause of action.

3 22) The court was not impartial and disinterested when it denied Plaintiff's motion to vacate
4 judgment filed on May 9, 2016 that was styled as an independent action in equity. Plaintiff's
5 motion to vacate set out grounds to vacate judgment on his complaint (C-06-05302 RMW) based
6 on fraud on the court and the court's failure to follow 28 U.S.C. Section 1738 (the Full Faith and
7 Credit Act) when it dismissed Defendant City of San Jose based on collateral estoppel.
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9 23) The court's pervasive and deep seated bias against Plaintiff and favoritism towards
10 Defendants deprived Plaintiff of an impartial and disinterested tribunal that is guaranteed by the
11 due process clause of the Fifth Amendment of the United States Constitution.

12 **REQUEST FOR RELIEF**

13 24) Plaintiff respectfully requests that the court vacate and set aside the judgment in case C-
14 06-05302 RMW and reinstate his causes of action based on reasons stated in this complaint and
15 for any other reason(s) the court may deem appropriate.

16 Date: October 19, 2020

17 
18 Frederick Bates
19 Plaintiff, Pro Se